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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/579,918

05/19/2006

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0540-1059

9822

466 7590 02/17/2009

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EXAMINER

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ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

02/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |  |                                       |  |
|------------------------------|--|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/579,918   | <b>Applicant(s)</b><br>TOMBU, NICOLAS |  |
|                              | <b>Examiner</b><br>Jennifer E. Novosad | <b>Art Unit</b><br>3637               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 10/579,918.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/19/06</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office action is in response to the application and preliminary amendment filed May 19, 2006, by which claims 4, 6, 9, 10, 12, and 13 were amended and claims 15 and 16 were added.

#### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/579,918, filed on May 19, 2006.

#### ***Information Disclosure Statement***

The information disclosure statement filed May 19, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 4, 6-12, and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered indefinite since it is unclear what structure defines "it" (in line 3). *Further*, the word "means" is preceded by the word(s) "support" (see line 3) in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). *Finally*, the structural relationship between the elements is unclear, i.e., it is unclear what defines "overhanging fashion".

Claim 4 recites the limitation "the form of an incurved surface". There is insufficient antecedent basis for this limitation in the claim.

The recitation "ensuring", in claims 6 and 15, renders the claim indefinite since this recitation is vague, thereby making the metes and bounds of the claim unclear.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required

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feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 7 recites the broad recitation hollow element, and the claim also recites ("particularly") a tube which is the narrower statement of the range/limitation. *Further*, it is unclear what is meant by "constituting" (in line 4 of the claim) and thus the metes and bounds of the claim cannot be properly ascertained, since it is unclear exactly what structure is being claimed.

Claim 8 is rendered since it is unclear whether an additional tube is being claimed, or whether the tube recited in line 2 is the same tube as set forth in claim 6.

Claim 9, in its entirety, is rendered indefinite for the following reasons: (a) the structural relationship between the prestressed post and the other elements is unclear, since such a post has not been properly set forth; (b) the use of the phrase "generally but not necessarily" makes it unclear as to whether the elements are being claimed or not; and (c) it is unclear whether a cross bar is being claimed, since it is improper to use such a word as "called".

The limitation "a prestressed post can" in line 2-3 of claim 10, renders the claim indefinite since the structural relationship between the prestressed post and the other elements is unclear, since such a post has not been properly set forth. *Further*, it is unclear whether a ring is being claimed or not, because what "can be" to one, "can not be" to another. *Finally*, the limitations "the tubular element or elements", "the inner diameter", and "the external diameter", lack proper antecedent basis in the claim.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim

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does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 11 recites the broad recitation projecting element, and the claim also recites ("particularly") a small collar which is the narrower statement of the range/limitation. *Further*, the term "small" is a relative term.

Use of the term "particularly" in claim 12 (see line 3) renders the claim indefinite since it is unclear exactly what is being claimed, and therefore the metes and bounds of the claim cannot be properly ascertained. *Further*, the recitation "the phenomena of incipient rupture" lacks proper antecedent basis in the claim. This rejection is also applicable to claim 16.

Claim 14 is rendered indefinite since the claim appears to be incomplete thereby making the metes and bounds of the claim unascertainable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*Insomuch as the claims are best understood (especially in view of the Section 112, 2nd paragraph rejections, advanced above), claims 1, 4, 5, and 13 are rejected under 35*

U.S.C. 102(b) as being anticipated by U.S. Patent No. 487,765 (Ormerod '765).

Ormerod '765 discloses a device for holding cylinders whereby the device comprises posts (middle elements A) and support means (E) connected in overhanging fashion, i.e., from the middle to the left and to the right in Figure 2, and the means (E) being disposed on opposite side of the posts (A); *with respect to claim 4*, the support means (E) in the form of an incurved surface; *with respect to 5*, the surface of the means (E) comprise lugs (F, G); and *with respect to claim 13*, the support means (13) comprising bearing points (unnumbered - see straight elements between E and G in Figure 3).

*Insomuch as the claims are best understood (especially in view of the Section 112, 2nd paragraph rejections, advanced above), claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,673,092 (Lamson et al. '092).*

Lamson et al. '092 disclose a device for holding cylinders whereby the device comprises posts (34) and support means (16) connected in overhanging fashion, i.e., elements 16 overhang posts 14 from the left to the right in Figure 2), and the means (16) being disposed on opposite side of the posts (14), i.e., the top element 16 is disposed from left to right in Figure 2 and the bottom 16 is disposed from right to left in Figure 2.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2, 3, 6-13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson et al. '092, alone.

Lamson et al. '092 disclose the device as advanced above whereby *with respect to claim 3*, the posts (34) comprise a hollow element (34) and a tension member (14); *with respect to claims 6 and 15*, the support means (6) comprises a cross piece (22) between two posts (34); *with respect to claims 7-9*, the hollow element (34) defines a tube and is connected (at 40) to the ends of the cross piece (22); *with respect to claim 10*, the post (34) has a ring (40) disposed between the tubular element (34) and the tension member (14) whereby the internal diameter of the ring (40) is adjusted to the external diameter of the tension member (14) and the external diameter of the ring (40) is adjusted to the internal diameter of the tubular element (34); *with respect to claim 11*, the rung (40) comprising a projecting element (30); and *with respect to claims 12 and 16*, the edges of the ring (40) are round; the support means (16) comprise bearing points (on 20 and in between).

The claims differ from Lamson et al. '092 in requiring the posts to be prestressed (claim 2).

Although Lamson et al. '092 do not disclose the posts being prestressed, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the



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examiner takes official notice) to have fabricated the posts in such a way, thereby increasing strength and stability of the device.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson et al. '092 as applied to claims 2, 3, 6-13, 15, and 16 above, and further in view of U.S. Patent No. 6,536,612 (Flores '612).

Lamson et al. '092 disclose the device as advanced above.

The claim differs from Lamson et al. '092 in requiring the bearing points to comprises rollers.

Flores '612 teach the use of rollers (22 - see Figure 10).

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Lamson et al. '092 with rollers, as taught by Flores '612, for ease in removal of objects placed in the device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832.

The examiner can normally be reached on Monday-Thursday, 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer E. Novosad/  
Primary Examiner, Art Unit 3637

February 12, 2009